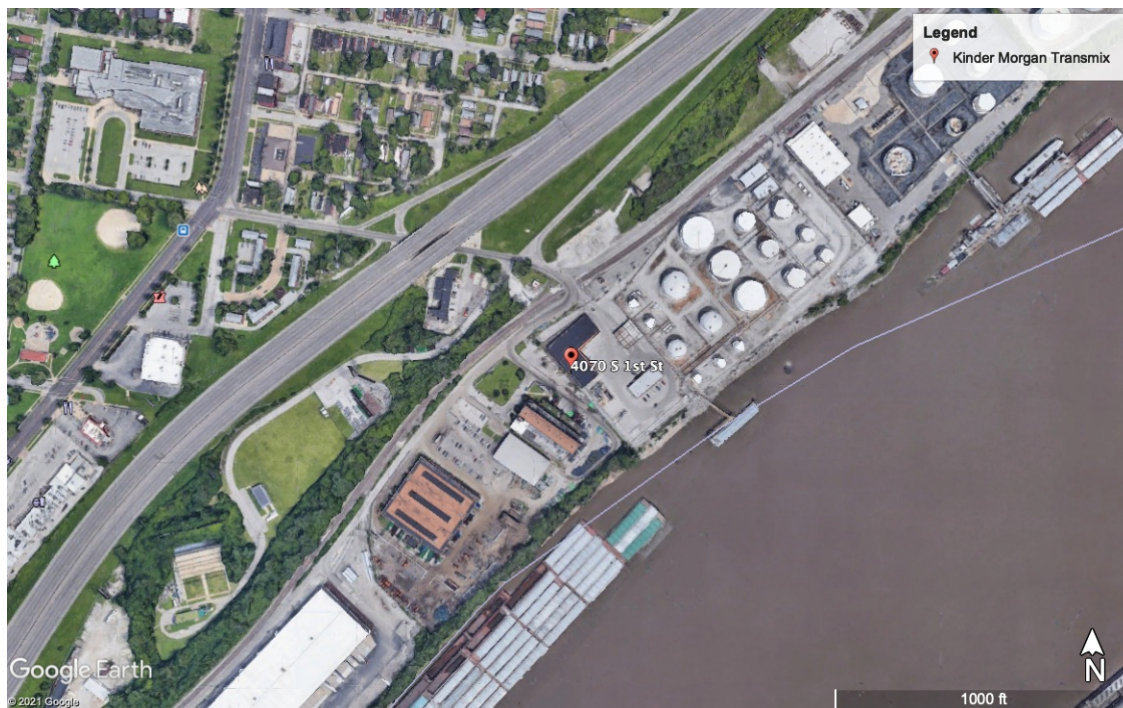




# EPA investigation finds Missouri out of compliance with federal civil rights rules

*The agency is investigating whether Missouri violated civil rights in issuing an air quality permit*

By **Allison Kite** - April 29, 2021



*The Missouri Department of Natural resources awarded an air pollution control permit to Kinder Morgan Transmix, located on the Missouri River. The Environmental Protection Agency is investigating whether DNR violated St. Louis residents' civil rights. (Google Earth)*

Federal officials are investigating whether Missouri environmental regulators violated the civil rights of St. Louis residents by issuing an air pollution control permit to a fuel transport business located near predominantly Black neighborhoods.

Already, investigators with the Environmental Protection Agency have found the Missouri Department of Natural Resources is out of compliance with regulations requiring agencies receiving money from the EPA to set up nondiscrimination programs, according to the federal agency's preliminary findings obtained by The Independent.

"Further...it appears that MoDNR ignored concerns raised over the years about its failure to have in place a nondiscrimination program consistent with its long standing legal obligations," the EPA finding says.

At issue is a permit DNR granted to Kinder Morgan Transmix to operate a facility that separates fuel products back into usable gasoline and other products after shipping. It sits along the Mississippi River near several predominantly Black South St. Louis neighborhoods.

The permit sets out legal limits on emissions and state and federal regulations. It requires the facility to track emissions and self report if it exceeds allowed standards. Emissions governed by the permit include volatile organic compounds, hazardous air pollutants, particulate matter, sulfur oxides, nitrogen oxides and carbon monoxide.



The way that permit was issued drew the attention of Great Rivers Environmental Law Center, a St. Louis-based environmental law firm. The firm submitted comments during the permit process, saying DNR had failed to follow federal regulations and asking it to study the disparate impacts air pollutants have on heavily minority communities.

But DNR said such analysis was not required and that if an applicant is in compliance with the program and its construction permit, the department “must” issue the permit.

Sarah Rubenstein, a staff attorney for Great Rivers, said attorneys weren’t aware of any violations at Kinder Morgan but typically comment on permits and renewals, asking for more monitoring of emissions, particularly when a facility is located near a residential neighborhood or other sources of pollution.

In recent years, Great Rivers has begun incorporating environmental justice concerns when it comments on air permits. She said DNR has largely ignored the agency’s complaints about the lack of nondiscrimination programs. So finally, the firm decided to file a complaint with the EPA.

As a result of DNR’s noncompliance with federal regulations, Great Rivers’ complaint said, minority and low-income residents near the Kinder Morgan facility would be “disproportionately exposed to air pollutants that are likely to threaten human health.”

Under Title VI of the Civil Rights Act, agencies receiving federal funds — in this case EPA funds flowing to DNR — are barred from discrimination on the basis of race, color and national origin, and by extension, English proficiency.

In response to Great Rivers’ initial comment on the permit, the department said it believed it had complied with Title VI.

In an email to The Independent, DNR said it does not comment on “pending litigation.”

“The Department of Natural Resources does not discriminate against any person or community based on any protected class, including but not limited to, race, color, national origin, sex or other status such as income level,” the department’s communications director, Connie Patterson, said in an email. “We consider nondiscrimination a duty and an integral part of our mission.”

Melissa Ruiz, a spokeswoman for Kinder Morgan, said in an email that DNR “conducted a thorough inspection of our facility for compliance with its applicable air regulations and permitting.

“There were no concerns identified,” she said.

Rubenstein said Title VI enforcement has been more lax in recent years, so it’s significant that EPA not only opened the investigation but made a preliminary finding against DNR.

“It’s just very blatant,” she said.

## Dutchtown

Kinder Morgan’s facility is located at 1st and Gasconade streets in the Marine Villa neighborhood and near Dutchtown, Mount Pleasant and Gravois Park. The larger area is referred to as Dutchtown in the complaint.

More than half of the area residents are Black and another 10% are Latino. The area is disproportionately affected by potential hazardous pollution compared to other parts of the city.



And until Great Rivers contacted the Dutchtown South Community Corporation (DSCC), few neighbors knew much about the facility, said Karisa Gilman-Hernandez, a community empowerment organizer for DSCC. By not engaging, she said the facility got to exist in the background.

"I think a lot of people have just lived with the Kinder Morgan facility putting all of that into our air and into our soil for so long that it's just like — this is what it is like to live in this area, and that's it," she said.

Once the group started educating neighbors, she said the pieces started to connect.

"But when people were shown this is this facility," Gilman-Hernandez said, "this is the chemicals, they were like, 'Oh, you mean that smell?'"

Kinder Morgan has disputed the notion that its facility is responsible for the smell, which Gilman-Hernandez described as like burning tires or oil.

"Whoever issued the first building permits and allowed them to come in and build where they did was making it clear that the surrounding neighborhood was an area that they were willing to be polluted," Gilman-Hernandez said.

The Rev. Elston K. McCowan, first vice president of the St. Louis City NAACP, said he was always concerned when there are chemical facilities near where people are living. But his primary concern is the limited outreach by DNR.

"All of us want a seat at the table because if you're not at the table negotiating, that means you're on the menu," McCowan said.

Rubenstein said most of the information about what effect Kinder Morgan has on the health of the surrounding community is anecdotal. But she, too, noted the high rates of asthma.

According to the complaint, Dutchtown is adjacent to 600 sources of pollution, including 11 major sources.

"In contrast, industrial pollution sources are much fewer and farther between in suburban areas in St. Louis County, or even other sections of St. Louis City," the complaint says.

Great Rivers also cites a study that found majority Black parts of St. Louis are at an elevated risk for cancer caused by air pollutants. Parts of Dutchtown, including the ZIP code where Kinder Morgan is located, have among the highest rates asthma in the city, according to a city report.

The EPA's environmental justice mapping tool shows Dutchtown is well above average in terms of its risk for both respiratory hazards and hazardous waste.

"It's hard to say what (they are) suffering as a result, but they definitely have noticed a trend in that regard," Rubenstetin said.

McCowan said: "The problem with environmental injustice, environmental racism that is being imposed on the city of St. Louis — to me it's epic proportions."

## EPA findings

Great Rivers filed its comments, on behalf of the NAACP, in November 2019, saying DNR was not complying with Title VI.



But DNR issued the permit in March 2020 “without conducting any analysis of the disparate impacts associated with the permit” or “establishing a program...to ensure public involvement in the agency’s permit decision making processes,” according to the law firm.

Federal officials found that DNR lacked both a notice of nondiscrimination, stating to the public that the agency doesn’t discriminate, or a nondiscrimination coordinator, a staff member in charge of overseeing the nondiscrimination program.

Both are required by federal regulations.

The agency also didn’t have acceptable grievance procedures for residents who file civil rights complaints.

Perhaps most significantly, the EPA found DNR has not done enough to provide opportunities for people who aren’t proficient in English. EPA said DNR “did not provide any evidence” that it allowed opportunities for non-English speakers to testify during Kinder Morgan’s permit renewal.

Whether DNR’s broader public participation policies are compliant with Title VI is still under review.

EPA investigators also found DNR didn’t provide sufficient information for people with disabilities to access the agency’s programs or file grievances for failure to comply with the Americans with Disabilities Act.

The second half of the EPA investigation will focus more specifically on DNR’s decision to award the Kinder Morgan permit and whether it discriminated against residents of Dutchtown, Marine Villa Mount Pleasant and Gravois Park.

DNR has two options given the preliminary finding.

It either has 50 days from when EPA issued the finding to agree or submit a response disputing the finding or its recommendations. If DNR does neither, the EPA will forward the case onto the assistant attorney general within 14 days.

DNR did not say which path it would take.

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